

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

KEVIN GENE TOMASKIE,

Plaintiff,

vs.

CHOUTEAU COUNTY DETENTION
CENTER, DETENTION OFFICER
DANIEL GROVES, and (JOHN DOE)
INMATES,

Defendants.

CV 17-50-GF-BMM

ORDER

Plaintiff Kevin Tomaskie (Tomaskie) is a state prisoner proceeding *pro se*. Tomaskie filed a Complaint on June 14, 2017. (Doc. 2). Tomaskie alleges that the Defendants violated his rights under the United States Constitution in contravention of 42 U.S.C. § 1983 by inadvertently delivering his medical request, which contained protected health information, to another inmate.

United States Magistrate Judge John Johnston conducted an initial screening of Tomaskie's Complaint under 28 U.S.C. § 1915 on November 6, 2017. (Doc. 7). Judge Johnston determined that the Complaint failed to state a claim upon which relief may be granted. (Doc. 7 at 6). Judge Johnston explained why the Complaint failed to state a cognizable claim for relief under federal law. (Doc. 7 at 2-6). Judge Johnston gave Tomaskie an opportunity to cure the defects in his Complaint.

Judge Johnston directed Tomaskie to file an amended complaint on or before November 30, 2017. (Doc. 7 at 10). Judge Johnston informed Tomaskie that this action may be dismissed if he failed to comply with the Court's Order. *Id.*

Tomaskie did not file an amended complaint.

Judge Johnston issued Findings and Recommendations in this matter on December 11, 2017. (Doc. 8). Judge Johnston recommended that Tomaskie's Complaint be dismissed for failure to state a federal claim. (Doc. 8 at 2).

Tomaskie did not file objections to Judge Johnston's Findings and Recommendations.

The Court has reviewed Judge Johnston's Findings and Recommendations for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The Court finds no error in Judge Johnston's Findings and Recommendations, and adopts them in full.

Accordingly, IT IS ORDERED:

1. Tomaskie's Complaint (Doc. 2) is DISMISSED with prejudice.
2. The filing of this action counts as one strike under 28 U.S.C. § 1915(g), because Tomaskie's Complaint fails to state a claim upon which relief may be granted.
3. Any appeal of this decision would not be taken in good faith as the

claim asserted in Tomaskie's Complaint lacks an arguable basis in law or fact.

4. The Clerk is directed to enter judgment accordingly.

DATED this 18th day of January, 2018.



Brian Morris
United States District Court Judge